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8 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

9 In the Matter of

10 **ROBERT NEUMAN,**

11 Holder of License No. T014468
12 As a Pharmacy Technician Trainee
13 In the State of Arizona

Board Case No. 09-0029-PHR

**COMPLAINT AND NOTICE OF
HEARING**

14 **I. NOTICE OF PUBLIC HEARING.**

15 YOU ARE HEREBY NOTIFIED, the Arizona State Board of Pharmacy ("Board")
16 will conduct an administrative hearing at the following place and time, to determine
17 whether grounds exist to revoke or take other action regarding Pharmacy Technician
18 Trainee License No. T014468 held by Robert Neuman ("Respondent"):

19 **Arizona State Board of Pharmacy**
20 **1700 W. Washington Street, 3rd Floor Board Room**
21 **Phoenix, Arizona 85007**
22 **On September 24, 2009, at 9:00 a.m.**

23 and continuing on successive days until concluding, concerning the matters set forth in
24 this Complaint and Notice of Hearing, at which time and place, evidence, testimony and
25 argument in support of the charges set forth in the Complaint will be presented. If you
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1 desire to make a defense to the charges at the hearing, you may appear at the hearing in
2 person and may be represented by legal counsel and may at that time cross-examine the
3 witnesses against you and present testimony of witnesses, evidence and argument in your
4 own behalf.

5 **Whether or not you intend to appear at the hearing, pursuant to A.R.S. § 32-**
6 **1927.01(O), YOU ARE REQUIRED to prepare and file a written Answer to the**
7 **allegations alleged in the above Complaint with the Board within 30 days after**
8 **service of this Complaint and Notice of Hearing.** Your Answer should contain specific
9 admissions or denials of the allegations of the Complaint, and may contain concise
10 factual allegations which you contend constitute a ground or grounds for defense. Your
11 Answer must be in writing, verified under oath, and filed with the Board within thirty
12 (30) days after service of the Complaint. *Id.* **THE BOARD SHALL CONSIDER**
13 **YOUR FAILURE TO RESPOND WITHIN THIS TIME AS YOUR ADMISSION**
14 **BY DEFAULT TO THE ALLEGATIONS STATED IN THE COMPLAINT.** *Id.*
15 The Board may then take any action allowed by A.R.S. § 32-1927.01 without conducting
16 a hearing. If you Answer and fail to appear for the hearing, the Board may proceed in
17 your absence. If you desire to waive a hearing and not contest the facts herein alleged,
18 you may file an Answer consisting of a declaration that the material allegations of the
19 Complaint are admitted.

20 After the hearing, if the Board determines that you have committed unprofessional
21 conduct or that you are professionally incompetent or physically or mentally
22 incapacitated to such a degree as to render you unfit to safely perform your employment
23 duties, the Board may revoke or suspend your license, place you on probation, issue you
24 a decree of censure or letter of reprimand, or impose upon you a civil penalty of not more
25 than \$1,000 for each violation. A.R.S. § 32-1927.01(A), (B). The Board may also charge
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1 you for the costs of the administrative hearing. A.R.S. § 32-1927.01(C).

2 In accordance with Title II of the Americans with Disabilities Act (ADA), the
3 Board does not discriminate on the basis of disability in admission to and participation in
4 hearings. Should you, or anyone you call as a witness need special accommodations,
5 please contact the Board office at (602) 771-2727 at least three working days before the
6 hearing.

7 Pursuant to A.R.S. § 32-3206, you have the right to request a copy of the
8 following information from the Board:

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- 10 1. Any review conducted by an expert or consultant providing an evaluation
of or opinion on the allegations.
 - 11 2. Any records on the patient obtained by the board from other health care
providers.
 - 12 3. The results of any evaluations or tests of the health professional conducted
at the board's direction.
 - 13 4. Any other factual information that the board will use in making its
determination.

14 Please be advised that if you obtain the above-referenced information from the board, you
15 may not release it to any other person or entity or use it in any proceeding or action
16 except the administrative proceeding or appeals related to the administrative proceeding.
17 Violation of this restriction constitutes an act of unprofessional conduct per A.R.S. § 32-
18 3206(B). Also, please be advised that pursuant to A.R.S. § 32-3206(C), you or your
19 attorney may be charged for the cost of providing the information received up to the fee
20 for making a copy of each page as prescribed by A.R.S. § 12-284(A).

21 **PARTIES AND JURISDICTION**

22 1. The Board is the duly constituted authority for licensing and regulating the
23 practice of pharmacy in the State of Arizona.

24 2. Respondent is the holder of license number T014468, which allows him to
25 practice as a pharmacy technician trainee in the State of Arizona.

1 3. Under A.R.S. § 32-1901, *et seq.*, the Board possess jurisdiction over the
2 subject matter and over Respondent as a licensee of the Board.

3 **FACTUAL ALLEGATIONS**

4 1. During all times relevant to this Complaint, Respondent was employed as a
5 pharmacy technician trainee at Bashas' Pharmacy #100, Bashas' Pharmacy #86, Bashas'
6 Pharmacy #160, and Food City Pharmacy #164 in Arizona (the "Pharmacies").

7 2. In October 2008, Bashas' loss personnel interviewed Respondent
8 concerning a loss of controlled substances. Respondent admitted diverting Dilaudid
9 (hydromorphone), Endocet (oxycodone/APAP), and oxycodone. Respondent admitted to
10 taking at least 30 tablets of the controlled substances for his friend.

11 3. A subsequent Board controlled substance audit documented shortages of
12 the following at Bashas' Pharmacy #100: 20 tablets of oxycodone 5/325; 5 tablets of
13 oxycodone ER 20; 10 tablets of oxycodone IR 30; 12 tablets of oxycodone IR 5; and 1
14 tablet of oxycodone 10/325. The audit did not disclose who was responsible for the
15 shortages.

16 4. A subsequent Board controlled substance audit documented shortages of
17 the following at Bashas' Pharmacy #86: 1 tablet of Endocet 7.5/325; 4 tablets of
18 oxycodone IR 5; and 1 tablet of hydromorphone 4. The audit did not disclose who was
19 responsible for the shortages.

20 5. A subsequent Board controlled substance audit documented shortages of
21 the following at Food City Pharmacy #164: 87 tablets of oxycodone IR 15; 1 tablet of
22 oxycodone IR 30; and 39 tablets of oxycodone 5/325. The audit did not disclose who
23 was responsible for the shortages.

24 6. A subsequent Board controlled substance audit documented shortages of
25 the following at Bashas' Pharmacy #160: 3 tablets of oxycodone IR 15; 3 tablets of
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1 oxycodone 10/325; 9 tablets of oxycodone 7.5/325; 8 tablets of oxycodone ER 20; and 11
2 tablets of oxycodone IR 5. The audit did not disclose who was responsible for the
3 shortages.

4 7. Hydromorphone is a Schedule II controlled substance. A.R.S. § 36-
5 2513(A)(1)(a)(xi).

6 8. Oxycodone and oxycodone/APAP are Schedule II controlled substances.
7 A.R.S. § 36-2513(A)(1)(a)(xiv).

8 9. In 2002 Respondent was convicted of misdemeanor assault in Tucson
9 Municipal Court Case No. M-1041-CR-1108975. However, when Respondent completed
10 his Application for Licensure as a Arizona Pharmacy Technician on August 1, 2007, he
11 answered "No" to the question "Has the applicant had any convictions involving a
12 misdemeanor, felony offenses or any drug-related offenses." That question further stated
13 that the applicant was to answer "Yes" even if the conviction had been vacated,
14 pardoned, expunged, dismissed, appealed, or the applicant's civil rights had been
15 restored.

16 ALLEGED VIOLATIONS

17 1. The Board possesses jurisdiction over the subject matter and over
18 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

19 2. Pursuant to A.R.S. § 32-1927.01(A)(1), the Board may discipline a
20 pharmacy technician trainee who has engaged in unprofessional conduct.

21 3. The conduct and circumstances described above constitute a violation of
22 A.R.S. § 13-1802(A)(1) (A person commits theft if, without lawful authority, the person
23 knowingly controls another person's property with the intent to deprive that other person
24 of such property). Theft is a crime of moral turpitude. *State v. Superior Court of Pima*
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1 *County*, 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978) (shoplifting involves
2 moral turpitude and bears a close relationship to the common law crime of larceny).

3 4. The conduct and circumstances described above constitute a violation of
4 A.R.S. § 13-3406(A)(1) (A person may not knowingly possess or use a prescription-only
5 drug unless the person obtains the prescription-only drug pursuant to a valid prescription
6 of a licensed prescriber). Furthermore, a person may not knowingly obtain or procure the
7 administration of a prescription-only drug by fraud, deceit, misrepresentation or
8 subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal acquisition, possession
9 or procurement of a prescription-only drug is a class 1 misdemeanor. A.R.S. § 13-
10 3406(B)(1).

11 5. The conduct and circumstances described above constitute a violation of
12 A.R.S. § 13-3406(A)(7) (A person may not sell, transfer or offer to sell or transfer a
13 prescription-only drug). Such illegal transfer of a prescription-only drug is a class 6
14 felony. A.R.S. § 13-3406(B)(2).

15 6. The conduct and circumstances described above constitute a violation of
16 A.R.S. § 36-2531(E) (A person may not knowingly or intentionally acquire or obtain
17 possession of a controlled substance by means of forgery, fraud, deception or subterfuge).
18 A person who violates A.R.S. § 36-2531(E) is guilty of a class 4 felony. A.R.S. § 36-
19 2531(E).

20 7. The conduct and circumstances described above constitute a violation of
21 A.R.S. § 36-2525(D) (A controlled substance included in schedule II shall not be
22 dispensed without the written prescription order in ink or indelible pencil or typewritten
23 and manually signed by the medical practitioner).

24 8. The conduct and circumstances described above constitute a violation of
25 A.R.S. § 36-2531(A)(1) (It is unlawful for any person who is subject to A.R.S. § 36-2521
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1 *et seq.* to intentionally or knowingly distribute or dispense a controlled substance in
2 violation of section 36-2525). A person who violates A.R.S. § 36-2531(A)(1) is guilty of
3 a class 4 felony. A.R.S. § 36-2531(B).

4 9. The conduct and circumstances described above constitute a violation of
5 A.R.S. § 32-1968(A) ("A prescription-only drug shall be dispensed only under one of the
6 following conditions: (1) By a medical practitioner in conformance with A.R.S. § 32-
7 1921; (2) On a written prescription order bearing the prescribing medical practitioner's
8 manual signature; (3) On an electronically transmitted prescription order containing the
9 prescribing medical practitioner's electronic or digital signature that is reduced promptly
10 to writing and filed by the pharmacist; (4) On a written prescription order generated from
11 electronic media containing the prescribing medical practitioner's electronic or manual
12 signature. A prescription order that contains only an electronic signature must be applied
13 to paper that uses security features that will ensure the prescription order is not subject to
14 any form of copying or alteration; (5) On an oral prescription order that is reduced
15 promptly to writing and filed by the pharmacist; (6) By refilling any written,
16 electronically transmitted or oral prescription order if a refill is authorized by the
17 prescriber either in the original prescription order, by an electronically transmitted refill
18 order that is documented promptly and filed by the pharmacist or by an oral refill order
19 that is documented promptly and filed by the pharmacist.")


20 10. The conduct and circumstances described above constitute unprofessional
21 conduct pursuant to A.R.S. § 32-1901.01(C)(6) (Committing a felony, whether or not
22 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-
23 related offense. In either case, conviction by a court of competent jurisdiction or a plea
24 of no contest is conclusive evidence of the commission).

1 11. The conduct and circumstances described above constitute unprofessional
2 conduct pursuant to A.R.S. § 32-1901.01(C)(8) (Violating a federal or state law or
3 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous
4 drugs, controlled substances or precursor chemicals when determined by the board or by
5 conviction in a federal or state court).

6 12. The conduct and circumstances described above constitute unprofessional
7 conduct pursuant to A.R.S. § 32-1901.01(C)(13) (Knowingly filing with the Board any
8 application, renewal or other document that contains false or misleading information).

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10 DATED this 24th day of MARCH, 2009.

11 ARIZONA STATE BOARD OF PHARMACY

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13
14 By: 
15 HAL WAND, R.Ph.
16 Executive Director
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1 ORIGINAL OF THE FORGOING FILED
this 25 day of March, 2009, with:

2 Arizona State Board of Pharmacy
3 1700 West Washington Street, Suite 250
4 Phoenix, Arizona 85007

5 COPY OF THE FOREGOING MAILED
BY CERTIFIED & REGULAR FIRST-CLASS MAIL
this 25 day of March, 2009, to:

6 Robert Neuman
7 7950 E. Stella #H-5
8 Tucson, Arizona 85730
Respondent

9 COPY OF THE FOREGOING MAILED
this 25 day of March, 2009, to:

10 Christopher Munns
11 Assistant Attorney General
12 1275 W. Washington Street, CIV/SGO
Phoenix, Arizona 85007
Attorney for the Board

13 Elizabeth A. Campbell
14 Assistant Attorney General
15 1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
Attorney for the State

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18 #425546